

REMARKS

Claims 22-38 and 47-55 are pending in the Application. Claims 22, 23, 34, and 47 are independent. In the Office Action mailed August 9, 2005, the Examiner indicated that claims 23-38 and 47-55 were free of the prior art and allowed. In that same Office Action, the Examiner lodged minor objections to claims 22 and 23. Applicants responded on January 6, 2006 by incorporating the Examiner's suggestions to address the objections and canceling claims 13-21, without prejudice, for prosecution in a continuing application. Thus, with the January 6, 2006 Response and Amendment, claims 22-38 and 47-55 were free of the prior art and allowable.

On May 17, 2006, the Examiner withdrew the previously indicated allowability of claims 22-38 and 47-55 in view of a double patenting rejection. Specifically, the claims were **provisionally** rejected on the ground of nonstatutory obviousness-type double patenting as allegedly unpatentable over claims 69-105 of co-pending USSN 11/139,184.

Applicants respectfully maintain that the provisional double patenting rejection is improper in this case because the provisional double patenting rejection is the only remaining rejection in the current case. Instead, Applicants respectfully request that the double patenting rejection be removed from this earlier-filed application and considered in the later-filed Application No. 11/139,184. This practice is entirely consistent with MPEP §804(I)(1), which states:

If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is

rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

The present application was filed March 15, 2002. In contrast, co-pending Application No. 11/139,184 was filed May 27, 2005 and has yet to be examined. Thus, the merits of any nonstatutory obviousness-type double patenting rejection should properly be considered in the later-filed application.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection and allow the claims to pass to issuance. If any issues remain, the Examiner is invited to call Applicants' undersigned representative at (949) 760-9600. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,

O'MELVENY & MYERS LLP

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By: David P. Dalke
David P. Dalke
Reg. No. 40,980
Attorneys for Applicants

DPD

Customer No.

34263

PATENT TRADEMARK OFFICE

O'Melveny & Myers LLP
610 Newport Center Drive, Suite 1700
Newport Beach, CA 92660-6429
(949) 760-9600

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